

Message Text

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AMEMBASSY LIMA PRIORITY

C O N F I D E N T I A L STATE 310922

USIAEA

E.O. 11652:GDS

TAGS: ENRG, MNUC, TECH

SUBJECT: AGENCY PROJECT AGREEMENT

REFS: A) LIMA 10923; B) BUENOS AIRES 09252; C) LIMA 10358;
D) BUENOS AIRES 09054; E) VIENNA 0912362;
F) STATE 278636; G) VIENNA 10901 (H) BUENOS AIRES
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1. THIS TELEGRAM TRANSMITS DRAFT FOUR-PARTY PROJECT
AGREEMENT ENVISAGED REF. (H) AS WELL AS ACCOMPANYING
DRAFT PERU-USG EXCHANGE OF NOTES. MISSION REQUESTED TO
PROVIDE AGENCY AND ARGENTINE AND PERUVIAN MISSIONS THIS
DRAFT ASAP WITH VIEW TO NEGOTIATION OF AGREEMENT IN TIME
FOR APPROVAL BY FEB. BOARD MEETING. FYI. U.S. FEELS
THAT BOARD CAN APPROVE PROJECT AGREEMENT AT FEB. BOARD
MEETING BUT THAT PERU'S NPT SAFEGUARDS AGREEMENT MUST BE
IN EFFECT BEFORE U.S. COULD SIGN PROJECT AGREEMENT AND
ACCOMPANYING EXCHANGE OF NOTES WITH PERU.END FYI.

MISSION SHOULD PROVIDE DRAFT NOTETO AGENCY, ARGENTINE AND PERUVIAN MISSIONS.

2. THIS PACKAGE WILL PERMIT TRANSFER OF U.S. ORIGIN FUEL, SUBJECT TO ADMINISTRATIVE APPROVAL (MB-10), FROM ARGENTINA TO PERU UNDER AUSPICES OF U.S.-IAEA AGREEMENT. WE HAVE MODELED PACKAGE ON MALAYSIAN DRAFT (STATE 278636, AS MODIFIED) TO THE EXTENT APPLICABLE. OBVIOUSLY, WE DO NOT ATTEMPT TO EXERT U.S. CONTROLS BEYOND SCOPE OF U.S.-ORIGIN FUEL AND MATERIAL PRODUCED THROUGH ITS USE.

3. WE HAVE DRAFTED AGREEMENT TO COVER BOTH REACTOR AND FUEL. WE DID THIS MERELY TO FACILITATE RAPID CONCLUSION OF PROJECT AGREEMENT. USG DOES NOT REPEAT NOT INSIST ON COVERING REACTOR IN THIS AGREEMENT, AS REACTOR IS NOT OF U.S. ORIGIN. WE HAVE NOT ATTACHED ANY U.S. CONTROLS TO REACTOR IN DRAFT AGREEMENT OR NOTE. IF AGENCY, ARGENTINA OR PERU WOULD PREFER TO DEAL ONLY WITH FUEL IN THIS AGREEMENT, MISSION MAY ADVISE THAT WE WOULD BE PREPARED TO REVISE AGREEMENT ACCORDINGLY.

2. BEGIN TEXT

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DRAFT AGREEMENT BETWEEN THE INTERNATIONAL ATOMIC ENERGY AGENCY AND THE GOVERNMENTS OF THE UNITED STATES OF AMERICA, ARGENTINA AND PERU CONCERNING THE TRANSFER OF A RESEARCH REACTOR AND ENRICHED URANIUM

WHEREAS, THE GOVERNMENT OF PERU (HEREINAFTER CALLED "PERU"), DESIRING TO ESTABLISH A PROJECT CONSISTING OF A REACTOR FOR RESEARCH PURPOSES, HAS REQUESTED THE ASSISTANCE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY (HEREINAFTER CALLED THE "AGENCY" IN SECURING A ZERO POWER RESEARCH REACTOR AND THE SPECIAL FISSIONABLE MATERIAL TO BE USED THEREIN;

WHEREAS, GOVERNMENT OF THE UNITED STATES OF AMERICA (HEREINAFTER CALLED THE "UNITED STATES") AND PERU, BEING PARTIES TO THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS (HEREINAFTER CALLED THE "TREATY"), DESIRE TO PROMOTE UNIVERSAL ADHERENCE TO THE TREATY;

WHEREAS, PERU ON CONCLUDED WITH THE AGENCY AN AGREEMENT FOR THE APPLICATION OF SAFEGUARDS IN CONNECTION WITH THE TREATY (HEREINAFTER CALLED "TREATY AGREEMENT");

WHEREAS, UNDER THE AGREEMENT FOR COOPERATION BETWEEN THE UNITED STATES AND ARGENTINA CONCLUDED ON 25 JUNE 1969 (HEREINAFTER CALLED "UNITED STATES-ARGENTINA AGREEMENT FOR COOPERATION") THE UNITED STATES TRANSFERRED ENRICHED

URANIUM TO ARGENTINA SUBJECT TO THE RIGHT TO APPROVAL
OVER ITS RETRANSFER BEYOND THE JURISDICTION OF ARGENTINA;

WHEREAS, THE AGENCY AND THE UNITED STATES ON MAY 11 1959
CONCLUDED AN AGREEMENT FOR COOPERATION (HEREINAFTER CALLED
THE "UNITED STATES-IAEA AGREEMENT FOR COOPERATION");

WHEREAS, THE GOVERNMENT OF THE ARGENTINE REPUBLIC (HEREIN-
AFTER CALLED "ARGENTINA"), PERU AND THE UNITED STATES,
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REAFFIRM SUPPORT OF THE OBJECTIVES OF THE TREATY
AND THE STATUTE OF THE AGENCY, (HEREINAFTER CALLED THE
"STATUTE"), AND IN THIS REGARD THEY HAVE DEMONSTRATED THEIR
COMMITMENT TO ENSURING THAT THE INTERNATIONAL DEVELOPMENT
AND USE OF NUCLEAR ENERGY FOR PEACEFUL PURPOSES ARE
CARRIED OUT UNDER ARRANGEMENTS WHICH, TO THE MAXIMUM
EXTENT, WILL PREVENT THE PROLIFERATION OF NUCLEAR EXPLO-
SIVE DEVICES;

WHEREAS, PERU HAS MADE ARRANGEMENTS WITH ARGENTINA
FOR THE TRANSFER OF A ZERO POWER RESEARCH REACTOR AND
FOR FUEL ELEMENTS FOR THE REACTOR CONTAINING ENRICHED URA-
NIUM OF UNITED STATES ORIGIN TRANSFERRED PURSUANT TO THE
UNITED STATES-ARGENTINA AGREEMENT FOR COOPERATION;

WHEREAS THE BOARD OF GOVERNORS OF THE AGENCY APPROVED
THE PROJECT ON (FILL IN DATE) FEBRUARY 1978;

NOW THEREFORE, THE AGENCY, PERU, ARGENTINA AND THE
UNITED STATES HEREBY AGREE AS FOLLOWS:

ARTICLE I

DEFINITION OF THE PROJECT

1. THE PROJECT TO WHICH THIS AGREEMENT RELATES IS
THE ESTABLISHMENT AT (FACILITY), (CITY) PERU OF A ZERO
POWER RESEARCH REACTOR, INCLUDING ANY NECESSARY ANCILLARY
EQUIPMENT, (HEREINAFTER CALLED THE "SUPPLIED REACTOR")
TO BE OPERATED BY (OPERATOR).

2. THIS AGREEMENT SHALL APPLY TO ANY ADDITIONAL
ASSISTANCE PROVIDED BY THE AGENCY TO PERU FOR THE
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PROJECT.

3. EXCEPT AS SPECIFIED IN THIS AGREEMENT,
THE UNITED STATES DOES NOT ASSUME ANY OBLIGATIONS

OR RESPONSIBILITIES INsofar AS THE PROJECT IS CONCERNED.
IN PARTICULAR, PERU SHALL ASSUME FULL RESPONSIBILITY FOR
ANY CLAIMS ARISING OUT OF ITS ACTIVITIES IN CONNECTION
WITH THE PROJECT.

ARTICLE II

SUPPLY OF THE REACTOR

1. THE AGENCY SHALL REQUEST ARGENTINA TO PERMIT THE
TRANSFER (ON A LOAN BASIS, WITH AN OPTION TO PURCHASE) AND
EXPORT TO PERU OF THE SUPPLIED REACTOR.
2. ALL ARRANGEMENTS FOR THE TRANSFER, DELIVERY AND
INSTALLATION OF THE SUPPLIED REACTOR SHALL BE MADE BETWEEN
ARGENTINA AND PERU.

ARTICLE III

SUPPLY OF ENRICHED URANIUM

1. THE AGENCY SHALL REQUEST ARGENTINA AND THE
UNITED STATES TO PERMIT THE TRANSFER AND EXPORT TO PERU
OF THE FUEL ELEMENTS FOR THE SUPPLIED REACTOR.
2. ARGENTINA SHALL, SUBJECT TO APPROVAL BY THE
UNITED STATES, TRANSFER ON A LOAN BASIS TO THE AGENCY
AND THE AGENCY SHALL RETRANSFER TO PERU, APPROXIMATELY
14,785.9 GRAMS OF URANIUM OF UNITED STATES ORIGIN ENRICH-
ED TO APPROXIMATELY 20.09 PERCENT BY WEIGHT IN THE ISO-
TOPE 235, CONTAINED IN FUEL ELEMENTS FOR THE
SUPPLIED REACTOR, (HEREINAFTER CALLED "SUPPLIED MATERIALS")
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3. THE UNITED STATES SHALL APPROVE THE TRANS-
FER DESCRIBED IN PARAGRAPH 2, PURSUANT TO THE UNITED
STATES-ARGENTINA AGREEMENT FOR COOPERATION.
4. UPON TRANSFER TO PERU, THE SUPPLIED MATERIAL SHALL BE
SUBJECT TO THE TERMS AND CONDITIONS OF THE UNITED STATES-
IAEA AGREEMENT FOR COOPERATION.

ARTICLE IV

SHIPMENT OF THE SUPPLIED MATERIAL

1. ALL ARRANGEMENTS FOR THE EXPORT FROM ARGENTINA
OF THE SUPPLIED MATERIALS, SHALL BE THE RESPONSIBILITY
OF ARGENTINA AND PERU. PRIOR TO THE EXPORT OF ANY PART
OF SUCH MATERIAL, ARGENTINA SHALL NOTIFY THE AGENCY OF
THE AMOUNT THEREOF AND OF THE DATE AND METHOD OF SHIPMENT.
THE SUPPLIED MATERIALS SHALL BE ENTRUSTED TO A CARRIER

SELECTED BY PERU, AND SHALL BE TRANSFERRED TO THE AGENCY

AND SHALL THEREAFTER IMMEDIATELY AND AUTOMATICALLY BE TRANSFERRED TO PERU.

2. PRIOR TO SHIPMENT, ARRANGEMENTS ACCEPTABLE TO THE PARTIES TO THIS AGREEMENT (HEREINAFTER CALLED THE "PARTIES") SHALL BE MADE BETWEEN THE CARRIER SELECTED TO BE RESPONSIBLE IN ARGENTINA AND THE CARRIER SELECTED OR AGENT DESIGNATED BY PERU, FOR THE TIME AND PLACE OF SHIPMENT, AT WHICH TIME AND PLACE TRANSPORT RESPONSIBILITY SHALL ALSO BE TRANSFERRED TO SUCH CARRIER OR AGENT.

ARTICLE V
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PAYMENT

(TEXT TO BE DEVELOPED BY ARGENTINA AND PERU.)

ARTICLE VI

HANDLING AND USE

THE PARTIES SHALL TAKE ALL APPROPRIATE MEASURES TO

ENSURE THE SAFE HANDLING AND USE OF THE SUPPLIED REACTOR AND SUPPLIED MATERIALS, AND AFTER EXPORT FROM ARGENTINA, THE SAFE HANDLING AND THE USE OF THE SUPPLIED REACTOR AND SUPPLIED MATERIALS SHALL BE THE RESPONSIBILITY OF PERU.

NEITHER ARGENTINA NOR THE AGENCY WARRANTS THE SUITABILITY OR FITNESS OF THE SUPPLIED REACTOR FOR ANY PARTICULAR USE OR APPLICATION OR SHALL AT ANY TIME BEAR ANY RESPONSIBILITY TOWARD PERU, OR ANY OTHER PERSON, FOR THE SAFE HANDLING AND USE OF THE SUPPLIED REACTOR. NEITHER ARGENTINA, THE UNITED STATES NOR THE AGENCY WARRANTS THE SUITABILITY OR FITNESS OF THE SUPPLIED MATERIALS FOR ANY PARTICULAR USE OR APPLICATION OF SHALL AT ANY TIME BEAR ANY RESPONSIBILITY TOWARDS PERU, OR ANY OTHER PERSON FOR THE SAFE HANDLING AND USE OF THE SUPPLIED MATERIALS.

ARTICLE VII

SAFEGUARDS

1. PERU GUARANTEES THAT THE SUPPLIED REACTOR, THE SUPPLIED MATERIAL, AND ANY SOURCE OR SPECIAL FISSIONABLE MATERIAL USED IN OR PRODUCED THROUGH THE USE OF THE SUPPLIED REACTOR OR THE SUPPLIED MATERIAL SHALL NOT BE USED FOR NUCLEAR WEAPONS OR ANY NUCLEAR EXPLOSIVE DEVICE, FOR RE-
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SEARCH ON OR DEVELOPMENT OF NUCLEAR WEAPONS OR ANY NUCLEAR EXPLOSIVE DEVICE, OR FOR ANY OTHER MILITARY PURPOSE.

2. THE SUPPLIED MATERIALS
AND ANY SOURCE OR SPECIAL FISSIONABLE MATERIAL
PRODUCED THROUGH THEIR USE
SHALL BE USED EXCLUSIVE-
LY BY AND REMAIN AT (FACILITY) UNLESS OTHERWISE AGREED BY
THE PARTIES.

3. THE SUPPLIED MATERIALS AND ANY SPECIAL FISSIONABLE
MATERIAL PRODUCED THROUGH THEIR USE SHALL ONLY BE STORED
OR REPROCESSED OR OTHERWISE ALTERED IN FORM OR CONTENT
UNDER CONDITIONS AND IN FACILITIES ACCEPTABLE TO THE
PARTIES. SUCH MATERIAL SHALL NOT BE FURTHER ENRICHED UN-
LESS SPECIFICALLY PROVIDED BY AN AMENDMENT TO THIS AGREE-
MENT OR BY A SUBSEQUENT SEPARATE AGREEMENT BETWEEN THE
PARTIES.

4. IT IS SPECIFIED THAT THE SAFEGUARDS RIGHTS AND
RESPONSIBILITIES OF THE AGENCY PROVIDED FOR IN PARAGRAPH
A OF ARTICLE XII OF THE STATUTE ARE RELEVANT TO THE PRO-
JECT AND SHALL BE IMPLEMENTED WITH RESPECT TO THE PROJECT.

5. IT IS FURTHER SPECIFIED THAT THE IMPLEMENTATION
OF THE AGENCY'S SAFEGUARDS RIGHTS AND RESPONSIBILITIES
REFERRED TO IN PARAGRAPH 4 OF THIS ARTICLE IS SATISFIED
BY THE APPLICATION OF SAFEGUARD PROCEDURES PURSUANT TO
THE TREATY AGREEMENT.

6. IN THE EVENT THE BOARD OF GOVERNORS OF THE AGENCY
(HEREINAFTER CALLED THE "BOARD") DETERMINES, IN A QIOR.
DANCE WITH ARTICLE XII.C OF THE STATUTE, THAT THERE HAS
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BEEN ANY NON-COMPLIANCE WITH ARTICLE VII OF THIS AGREE-
MENT, THE BOARD SHALL CALL UPON PERU TO REMEDY SUCH NON-
COMPLIANCE FORTHWITH, AND THE BOARD SHALL MAKE SUCH RE-
PORTS AS IT DEEMS APPROPRIATE. IN THE EVENT OF FAILURE
BY PERU TO TAKE FULLY CORRECTIVE ACTION WITHIN A REASON-
ABLE TIME, THE BOARD MAY TAKE ANY OTHER MEASURES PROVIDED
FOR IN ARTICLE XII.C OF THE STATUTE.

7. IN THE EVENT THAT THE AGENCY IS FOR ANY REASON
UNABLE TO APPLY SAFEGUARDS TO THE PROJECT UNDER THE TREATY
AGREEMENT OR UNDER SUCH OTHER ARRANGEMENTS AS MAY BE
MADE FOR THE IMPLEMENTATION OF THE AGENCY'S RIGHTS AND RES-
PONSIBILITIES REFERRED IN PARAGRAPH 4 OF THIS ARTICLE,
PERU AND THE UNITED STATES, FOLLOWING CONSULTATIONS WITH

THE AGENCY, SHALL IMPLEMENT FORTHWITH MEASURES TO VERIFY COMPLIANCE WITH THE UNDERTAKING SET FORTH IN PARAGRAPH-1 OF THIS ARTICLE.

8. PERU GUARANTEES IT SHALL ACCEPT THE IMPLEMENTATION OF THE SAFEGUARDS REQUIRED BY THIS AGREEMENT AND SHALL FACILITATE THE APPLICATION OF SUCH SAFEGUARDS

BY THE AGENCY. IF THE UNITED STATES OR ARGENTINA SO REQUEST, PERU SHALL PERMIT THE AGENCY AND THE AGENCY UNDERTAKES TO INFORM THE UNITED STATES AND ARGENTINA OF THE STATUS OF ALL INVENTORIES OF ANY MATERIALS REQUIRED TO BE SAFEGUARDED UNDER THIS AGREEMENT.

ARTICLE VIII

SAFETY STANDARDS AND MEASURES

THE SAFETY STANDARDS AND MEASURES SPECIFIED IN ANNEX A TO THIS AGREEMENT SHALL APPLY TO THE PROJECT.

ARTICLE IX CONFIDENTIAL

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AGENCY INSPECTORS

THE RELEVANT PROVISIONS OF THE TREATY AGREEMENT SHALL APPLY TO AGENCY INSPECTORS PERFORMING FUNCTIONS PURSUANT TO THIS AGREEMENT.

ARTICLE X

SCIENTIFIC INFORMATION

IN CONFORMITY WITH PARAGRAPH 8 OF ARTICLE VIII OF THE AGENCY STATUTE, PERU SHALL MAKE AVAILABLE TO THE AGENCY WITHOUT CHARGE ALL SCIENTIFIC INFORMATION DEVELOPED AS A RESULT OF THE ASSISTANCE PROVIDED BY THE AGENCY FOR THE PROJECT.

ARTICLE XI

LANGUAGES

ALL REPORTS AND OTHER INFORMATION REQUIRED FOR THE IMPLEMENTATION OF THIS AGREEMENT SHALL BE SUBMITTED TO THE AGENCY IN ONE OF THE WORKING LANGUAGES OF THE BOARD.

ARTICLE XII

PHYSICAL PROTECTION

1. PERU GUARANTEES THAT ADEQUATE PHYSICAL PROTECTION SHALL BE MAINTAINED WITH RESPECT TO THE SUPPLIED REACTOR AND SUPPLIED MATERIALS AND WITH RESPECT TO ANY SPECIAL FISSIONABLE MATERIAL USED IN OR PRODUCED THROUGH
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THE USE OF THE SUPPLIED REACTOR OR ANY SUPPLIED MATERIAL.

2. THE PARTIES AGREE TO THE LEVELS FOR THE APPLICA-

TION OF PHYSICAL PROTECTION SET FORTH IN ANNEX B TO THIS AGREEMENT, WHICH LEVELS MAY BE MODIFIED BY MUTUAL CONSENT OF THE PARTIES WITHOUT AMENDMENT OF THIS AGREEMENT. PERU SHALL MAINTAIN ADEQUATE PHYSICAL PROTECTION MEASURES IN ACCORDANCE WITH SUCH LEVELS. THESE MEASURES SHALL AS A MINIMUM PROVIDE PROTECTION COMPARABLE TO THAT SET FORTH IN AGENCY DOCUMENT INFCIRC/225/REV. L, ENTITLED, "THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL," AS IT MAY BE REVISED FROM TIME TO TIME.

3. THE ADEQUACY AND IMPLEMENTATION OF PHYSICAL PROTECTION MEASURES MAINTAINED PURSUANT TO THIS ARTICLE SHALL BE REVIEWED BY THE PARTIES FROM TIME TO TIME AND WHENEVER ANY PARTY IS OF THE VIEW THAT A REVISION MAY BE REQUIRED TO MAINTAIN ADEQUATE PHYSICAL PROTECTION.

ARTICLE XIII

SETTLEMENT OF DISPUTES

1. ANY DECISIONS OF THE BOARD CONCERNING THE IMPLEMENTATION OF ARTICLES VII, VIII OR IX SHALL, IF THEY SO PROVIDE, BE GIVEN EFFECT IMMEDIATELY BY THE AGENCY AND PERU PENDING THE FINAL SETTLEMENT OF ANY DISPUTE.

2. ANY DISPUTE INVOLVING THE AGENCY AND ONE OR MORE OF THE OTHER PARTIES AND ARISING OUT OF THE INTERPRETATION OR IMPLEMENTATION OF THIS AGREEMENT, WHICH IS NOT SETTLED BY NEGOTIATION OR AS MAY OTHERWISE BE AGREED BY THE PARTIES CONCERNED, SHALL ON THE REQUEST OF ANY PARTY BE SUBMITTED TO AN ARBITRAL TRIBUNAL COMPOSED AS FOLLOWS. EACH PARTY TO THE DISPUTE SHALL DESIGNATE ONE
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ARBITRATOR AND THE ARBITRATORS SO DESIGNATED SHALL BE UNANIMOUS DECISION ELECT AN ADDITIONAL ARBITRATOR, WHO SHALL BE THE CHAIRMAN. IF THE NUMBERS OF ARBITRATORS SO SELECTED IS EVEN, THE PARTIES TO THE DISPUTE SHALL BY UNANIMOUS DECISION ELECT AN ADDITIONAL ARBITRATOR. IF WITHIN THIRTY (30) DAYS OF THE REQUEST FOR ARBITRATION ANY

PARTY TO THE DISPUTE HAS NOT DESIGNATED AN ARBITRATOR, ANY OTHER PARTY TO THE DISPUTE MAY REQUEST THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE TO APPOINT THE NECESSARY NUMBER OF ARBITRATORS. THE SAME PROCEDURE SHALL APPLY IF WITHIN THIRTY (30) DAYS OF THE DESIGNATION OR APPOINTMENT OF THE ARBITRATORS, DESIGNATED BY EACH PARTY TO THE DISPUTE IS APPOINTED PURSUANT TO THE FOREGOING SENTENCE, THE CHAIRMAN OR ANY REQUIRED ADDITIONAL ARBITRA-

TOR HAS NOT BEEN ELECTED. A MAJORITY OF THE MEMBERS OF THE ARBITRAL TRIBUNAL SHALL CONSTITUTE A QUORUM, AND ALL DECISIONS SHALL BE MADE BY MAJORITY VOTE. THE ARBITRAL PROCEDURES SHALL BE ESTABLISHED BY THE TRIBUNAL, WHOSE DECISIONS, INCLUDING ALL RULINGS CONCERNING ITS CONSTITUTION, PROCEDURE, JURISDICTION AND THE DIVISION OF THE EXPENSES OF ARBITRATION BETWEEN THE PARTIES, SHALL BE FINAL AND BINDING ON ALL PARTIES. THE RENUMERATION OF THE ARBITRATORS SHALL BE DETERMINED ON THE SAME BASIS AS THAT OF AD HOC JUDGES OF THE INTERNATIONAL COURT OF JUSTICE.

ARTICLE XIV

ENTRY INTO FORCE

1. THIS AGREEMENT SHALL ENTER INTO FORCE UPON SIGNATURE BY OR FOR THE DIRECTOR GENERAL OF THE AGENCY AND BY THE AUTHORIZED REPRESENTATIVES OF ARGENTINA,
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PERU AND THE UNITED STATES.

2. NOTWITHSTANDING THE SUSPENSION OR TERMINATION OF THIS AGREEMENT OR ANY COOPERATION HEREUNDER FOR ANY REASON, ARTICLES VII, VIII, IX, XI AND XII SHALL CONTINUE IN EFFECT SO LONG AS ANY MATERIAL OR EQUIPMENT SUBJECT TO THESE PROVISIONS REMAINS IN THE TERRITORY OF PERU OR UNDER ITS JURISDICTION OR CONTROL ANYWHERE, OR UNTIL SUCH TIME AS THE PARTIES AGREE THAT SUCH MATERIAL OR EQUIPMENT IS NO LONGER USABLE FOR ANY NUCLEAR ACTIVITY RELEVANT FROM THE POINT OF VIEW OF SAFEGUARDS.

DONE IN VIENNA ON DATE OF 1978,
IN TRIPPLICATE IN THE ENGLISH AND SPANISH LANGUAGES,

FOR THE INTERNATIONAL ATOMIC ENERGY AGENCY:

FOR THE GOVERNMENT OF PERU:

FOR THE GOVERNMENT OF THE ARGENTINE REPUBLIC:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

ANNEX A

SAFETY STANDARDS AND MEASURES

1. THE SAFETY STANDARDS AND MEASURES APPLICABLE TO THE PROJECT SHALL BE THOSE SET FORTH IN AGENCY DOCUMENT

INFCIRC/18/REV.1 (HEREINAFTER CALLED THE "SAFETY DOCUMENT"), AS SPECIFIED BELOW.

2. PERU SHALL APPLY THE AGENCY'S BASIC SAFETY STANDARDS FOR RADIATION PROTECTION AND RELEVANT PROVISIONS OF THE CONFIDENTIAL

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AGENCY'S REGULATIONS FOR THE SAFE TRANSPORT OF RADIOACTIVE MATERIALS, AS THEY ARE REVISED BY THE AGENCY FROM TIME TO TIME, AND SHALL AS FAR AS POSSIBLE APPLY THEM ALSO TO ANY SHIPMENT OF THE SUPPLIED MATERIALS OUTSIDE THE JURISDICTION OF PERU. PERU SHALL ENDEAVOR TO ENSURE SAFETY CONDITIONS AS RECOMMENDED IN THE RELEVANT PARTS OF THE AGENCY'S CODES OF PRACTICE.

3. PERU SHALL ARRANGE FOR THE SUBMISSION TO THE AGENCY, AT LEAST 60 DAYS PRIOR TO THE PROPOSED TRANSFER OF ANY PART OF THE SUPPLIED MATERIALS TO THE JURISDICTION OF PERU, OF A DETAILED SAFETY ANALYSIS REPORT CONTAINING THE INFORMATION SPECIFIED IN PARAGRAPH 4.7 OF THE SAFETY DOCUMENT, WITH PARTICULAR REFERENCE TO THE FOLLOWING TYPES OF OPERATIONS TO THE EXTENT THAT SUCH INFORMATION IS RELEVANT AND NOT YET AVAILABLE TO THE AGENCY.

(A) RECEIPT AND HANDLING OF THE SUPPLIED MATERIALS;

(B) LOADING OF THE FUEL ELEMENTS INTO THE SUPPLIED REACTOR;

(C) START-UP AND PRE-OPERATIONAL TESTING OF THE SUPPLIED REACTOR WITH THE SUPPLIED MATERIALS;

(D) EXPERIMENTAL PROGRAM AND PROCEDURES INVOLVING THE SUPPLIED REACTOR;

(E) UNLOADING OF THE FUEL ELEMENTS FROM THE SUPPLIED REACTOR;

(F) HANDLING AND STORAGE OF THE FUEL ELEMENTS AFTER UNLOADING.

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ONCE THE AGENCY HAS DETERMINED THAT THE SAFETY MEASURES PROVIDED FOR ARE ADEQUATE, IT SHALL GIVE ITS CONSENT FOR THE START OF THE ASSISTED OPERATION. SHOULD PERU DESIRE TO MAKE SUBSTANTIAL MODIFICATIONS TO THE PROCEDURES WITH RESPECT TO WHICH INFORMATION HAS BEEN SUBMITTED, OR TO PERFORM ANY OPERATIONS WITH THE SUPPLIED REACTOR OR THE SUPPLIED MATERIALS WITH RESPECT TO WHICH OPERATION NO SUCH INFORMATION HAS BEEN SUBMITTED, IT SHALL SUBMIT TO THE AGENCY ALL RELEVANT INFORMATION AS SPECIFIED IN PARA-

GRAPH 4.7 OF THE SAFETY DOCUMENT, ON THE BASIS OF WHICH THE AGENCY MAY REQUIRE THE APPLICATION OF ADDITIONAL SAFETY MEASURES IN ACCORDANCE WITH PARAGRAPH 4.8 OF THE SAFETY DOCUMENT. ONCE PERU HAS UNDERTAKEN TO APPLY THE ADDITIONAL SAFETY MEASURES REQUESTED BY THE AGENCY, THE AGENCY SHALL GIVE ITS CONSENT FOR THE MODIFICATIONS OR OPERATIONS REFERRED TO ABOVE.

4. PERU SHALL ARRANGE FOR SUBMISSION TO THE AGENCY, AS APPROPRIATE, OF THE REPORTS SPECIFIED IN PARAGRAPHS 4.9 AND 4.10 OF THE SAFETY DOCUMENT.

5. THE AGENCY MAY, IN AGREEMENT WITH PERU SEND SAFETY MISSIONS FOR THE PURPOSE OF PROVIDING ADVICE AND ASSISTANCE TO PERU IN CONNECTION WITH THE APPLICATION OF SAFETY MEASURES TO THE PROJECT, IN ACCORDANCE WITH PARAGRAPHS 5.1 AND 5.3 OF THE SAFETY DOCUMENT. SPECIAL SAFETY MISSIONS MAY BE ARRANGED BY THE AGENCY IN THE CIRCUMSTANCES SPECIFIED IN PARAGRAPH 5.2 OF THE SAFETY DOCUMENT.

6. CHANGES IN THE SAFETY STANDARDS AND MEASURES LAID DOWN IN THIS ANNEX MAY BE MADE IN ACCORDANCE WITH PARAGRAPHS 6.1 AND 6.3 OF THE SAFETY DOCUMENT.

ANNEX B

PURSUANT TO ARTICLE XII, THE AGREED LEVELS OF PHYSICAL CONFIDENTIAL

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PROTECTION TO BE ENSURED BY THE COMPETENT NATIONAL AUTHORITIES IN THE USE, STORAGE AND TRANSPORTATION OF THE MATERIALS LISTED IN THE ATTACHED TABLE SHALL AS A MINIMUM INCLUDE PROTECTION CHARACTERISTICS AS FOLLOWS:

CATEGORY III

USE AND STORAGE WITHIN AN AREA TO WHICH ACCESS IS CONTROLLED.

TRANSPORTATION UNDER SPECIAL PRECAUTIONS INCLUDING PRIOR ARRANGEMENT AMONG SENDER, RECIPIENT AND CARRIER, AND PRIOR AGREEMENT BETWEEN ENTITIES SUBJECT TO THE JURISDICTION AND REGULATION OF SUPPLIER AND RECIPIENT STATES, RESPECTIVELY, IN CASE OF INTERNATIONAL TRANSPORT, SPECI-

FYING TIME, PLACE AND PROCEDURES FOR TRANSFERRING TRANSPORT RESPONSIBILITY.

CATEGORY II

USE AND STORAGE WITHIN A PROTECTED AREA TO WHICH ACCESS IS CONTROLLED, I.E., AN AREA UNDER CONSTANT SURVEILLANCE BY GUARDS OR ELECTRONIC DEVICES, SURROUNDED BY A PHYSICAL BARRIER WITH A LIMITED NUMBER OF POINTS OF ENTRY UNDER

APPROPRIATE CONTROL, OR ANY AREA WITH AN EQUIVILANT LEVEL OF PHYSICAL PROTECTION.

TRANSPORTATION UNDER SPECIAL PRECAUTIONS INCLUDING PRIOR ARRANGEMENTS AMONG SENDER, RECIPIENT AND CARRIER AND PRIOR AGREEMENT BETWEEN ENTITIES SUBJECT TO THE JURISDICTION AND REGULATION OF SUPPLIER AND RECIPIENT STATES, RESPECTIVELY, IN CASE OF INTERNATIONAL TRANSPORT, SPECIFYING TIME, PLACE AND PROCEDURES FOR TRANSFERRING TRANSPORT
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RESPONSIBILITY.

CATEGORY I

MATERIALS IN THIS CATEGORY SHALL BE PROTECTED WITH HIGHLY RELIABLE SYSTEMS AGAINST UNAUTHORIZED USE AS FOLLOWS:

USE AND STORAGE WITHIN A HIGHLY PROTECTED AREA, I.E., A PROTECTED AREA AS DEFINED FOR CATEGORY II ABOVE, TO WHICH, IN ADDITION, ACCESS IS RESTRICTED TO PERSONS WHOSE TRUSTWORTHINESS HAS BEEN DETERMINED, AND WHICH IS UNDER SURVEILLANCE BY GUARDS WHO ARE IN CLOSE COMMUNICATION WITH APPROPRIATE RESPONSE FORCES. SPECIFIC MEASURES TAKEN IN THIS CONTEXT SHOULD HAVE AS THEIR OBJECTIVE THE DETECTION AND PREVENTION OF ANY ASSAULT, UNAUTHORIZED ACCESS OR UNAUTHORIZED REMOVAL OF MATERIAL.

TRANSPORTATION UNDER SPECIAL PRECAUTIONS AS IDENTIFIED ABOVE FOR TRANSPORTATION OF CATEGORY II AND III MATERIALS AND, IN ADDITION, UNDER CONSTANT SURVEILLANCE BY ESCORTS AND UNDER CONDITIONS WHICH ASSURE CLOSE COMMUNICATION WITH APPROPRIATE RESPONSE FORCES.

(INSERT PAGE 9, INFCIRC/225/REV.1, "THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL")

DRAFT NOTE TO PERU

I HAVE THE HONOR TO REFER TO THE AGREEMENT AMONG THE INTERNATIONAL ATOMIC ENERGY AGENCY AND THE GOVERNMENTS OF ARGENTINA, PERU AND THE UNITED STATES OF AMERICA CONCERNING

THE TRANSFER OF A ZERO POWER RESEARCH REACTOR AND, ENRICHED URANIUM (HEREINAFTER CALLED "THE AGREEMENT") WHICH WAS SIGNED TODAY AND TO CONFIRM THE FOLLOWING UNDERSTANDINGS WHICH HAVE BEEN REACHED DURING THE DISCUSSIONS LEADING TO THE CONCLUSION OF THE AGREEMENT.

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IN THE EVENT THAT PERU OR THE UNITED STATES BECOMES AWARE OF CIRCUMSTANCES WHICH DEMONSTRATE THAT THE AGENCY IS FOR ANY REASON UNABLE TO APPLY SAFEGUARDS AS PROVIDED FOR BY

THE TREATY AGREEMENT, OR UNDER OTHER ARRANGEMENTS FOR THE IMPLEMENTATION OF THE AGENCY'S SAFEGUARDS RIGHTS AND RESPONSIBILITIES AS SPECIFIED IN PARAGRAPH 4 OF ARTICLE VII OF THE AGREEMENT, THE PROVISIONS OF NUMBERED PARAGRAPHS 1, 2, AND 3 SHALL APPLY;

1. THE UNITED STATES SHALL HAVE THE RIGHT TO REVIEW THE DESIGN OF

(I) THE SUPPLIED REACTOR, AND

(II) ANY OTHER EQUIPMENT, THE DESIGN OF WHICH THE UNITED STATES DETERMINES TO BE RELEVANT TO THE EFFECTIVE APPLICATION OF SAFEGUARDS,

WHICH ARE TO USE, FABRICATE, OR PROCESS ANY MATERIAL TRANSFERRED PURSUANT TO THE AGREEMENT OR ANY SPECIAL NUCLEAR MATERIAL USED IN OR PRODUCED THROUGH THE USE OF SUCH MATERIAL.

2. THE UNITED STATES SHALL HAVE THE RIGHT TO REQUIRE THE MAINTENANCE AND PRODUCTION OF RECORDS AND TO REQUEST AND RECEIVE REPORTS FOR THE PURPOSE OF ASSISTING IN ENSURING THE ACCOUNTABILITY FOR ANY MATERIAL TRANSFERRED TO PERU PURSUANT TO THIS AGREEMENT AND ANY SOURCE MATERIAL OR SPECIAL NUCLEAR MATERIAL USED IN OR PRODUCED THROUGH THE USE OF SUCH MATERIAL SO TRANSFERRED.

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3. FOR PURPOSES OF ENSURING THAT THERE IS COMPLIANCE WITH THIS AGREEMENT, THE UNITED STATES SHALL AS NECESSARY TO ACCOUNT FOR THE MATERIAL SUBJECT TO PARAGRAPHS 2, HAVE THE RIGHT TO:

(A) DESIGNATE, AFTER CONSULTATION WITH PERU, PERSONNEL, WHO ACCOMPANIED, IF EITHER PARTY SO REQUESTS, BY PERSONNEL DESIGNATED BY PERU, SHALL HAVE ACCESS IN PERU TO ALL PLACES AND DATA,

(B) INSPECT ANY EQUIPMENT,

(C) INSTALL ANY DEVICES, AND

(D) MAKE SUCH INDEPENDENT MEASUREMENTS AS MAY BE DEEMED NECESSARY.

PERU SHALL ESTABLISH AND MAINTAIN A SYSTEM OF ACCOUNTING FOR AND CONTROL OF ALL MATERIAL SUBJECT TO THE AGREEMENT, TO BE BASED ON A STRUCTURE OF MATERIAL BALANCE AREAS AND TO INCLUDE SUCH MEASURES AS:

(A) A MEASUREMENT SYSTEM, WHICH CONFORMS TO THE LATEST INTERNATIONAL STANDARDS OR IS EQUIVALENT IN QUALITY TO SUCH STANDARDS, FOR THE DETERMINATION OF THE QUANTITIES OF NUCLEAR MATERIAL RECEIVED, PRODUCED, SHIPPED, LOST OR OTHERWISE REMOVED FROM INVENTORY, AND THE QUANTITIES ON INVENTORY;

(B) THE EVALUATION OF PRECISION AND ACCURACY OF MEASUREMENTS AND THE ESTIMATION OF MEASUREMENT UNCERTAINTY;

(C) PROCEDURES FOR IDENTIFYING, REVIEWING AND EVALUATING DIFFERENCES BETWEEN SHIPPER AND RECEIVER MEASUREMENTS;

(D) PROCEDURES FOR TAKING A PHYSICAL INVENTORY;

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(E) PROCEDURES FOR THE EVALUATION OF ACCUMULATIONS OF MEASURED INVENTORY AND UNMEASURED LOSSES;

(F) A SYSTEM OF RECORDS AND REPORTS SHOWING, FOR EACH MATERIAL BALANCE AREA, THE INVENTORY OR MATERIAL AND THE CHANGES IN THAT INVENTORY INCLUDING RECEIPTS INTO AND TRANSFERS OUT OF THE MATERIAL BALANCE AREA;

(G) PROVISIONS TO ENSURE THAT THE ACCOUNTING PROCEDURES AND ARRANGEMENTS ARE BEING OPERATED CORRECTLY; AND

(H) OTHER SYSTEMS OF MEASUREMENT, CONTAINMENT AND SURVEILLANCE AS ARE NECESSARY TO FACILITATE THE APPLICATION OF SAFEGUARDS.

IN THE EVENT OF NON-COMPLIANCE WITH THE PROVISIONS OF ARTICLE VII OR XII OF THE AGREEMENT OR WITH THE PROVISIONS OF THIS EXCHANGE OF NOTES, THE UNITED STATES SHALL HAVE THE RIGHT TO REQUIRE THE RETURN OF ANY UNITED STATES ORIGIN MATERIAL OR MATERIAL PRODUCED THROUGH ITS USE WHICH IS SUBJECT TO THE AGREEMENT.

IN THE EVENT THAT PERU, AT ANY TIME FOLLOWING ENTRY INTO

FORCE OF THIS AGREEMENT:

(A) DOES NOT COMPLY WITH THE PROVISIONS OF ARTICLES VII OR XII OF THIS AGREEMENT OR WITH THIS EXCHANGE OF NOTES;

(B) DOES NOT ACCEPT SAFEGUARDS AS PROVIDED FOR BY THE TREATY AGREEMENT;

(C) DETONATES A NUCLEAR EXPLOSIVE DEVICE;

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(D) TERMINATES OR ABROGATES IAEA SAFEGUARDS;

(E) MATERIALLY VIOLATES AN IAEA SAFEGUARDS AGREEMENT;

(F) ENGAGES IN OR, ASSISTS, ENCOURAGES OR INDUCES ANY NON-NUCLEAR WEAPON STATE TO ENGAGE IN ACTIVITY INVOLVING SOURCE OR SPECIAL NUCLEAR MATERIAL AND HAVING DIRECT SIGNIFICANCE FOR THE MANUFACTURE OF NUCLEAR EXPLOSIVE DEVICES, OR

(G) ENTERS INTO AN AGREEMENT FOR THE TRANSFER OF REPROCESSING EQUIPMENT, MATERIALS, OR TECHNOLOGY TO ITS SOVEREIGN CONTROL OR TO THE SOVEREIGN CONTROL OF A NON-NUCLEAR WEAPON STATE EXCEPT IN CONNECTION WITH AN INTERNATIONAL FUEL CYCLE EVALUATION IN WHICH THE UNITED STATES AND PERU PARTICIPATE OR PURSUANT TO A SUBSEQUENT INTERNATIONAL AGREEMENT OR UNDERSTANDING TO WHICH BOTH PARTIES SUBSCRIBE,

THE UNITED STATES SHALL HAVE THE RIGHT TO REQUIRE THE RETURN OF ANY U.S.-ORIGIN MATERIAL OR ANY MATERIAL PRODUCED THROUGH ITS USE WHICH IS SUBJECT TO THE AGREEMENT.

IN THE EVENT THAT THE UNITED STATES EXERCISES ITS RIGHTS UNDER THIS EXCHANGE OF NOTES TO REQUIRE THE RETURN OF ANY MATERIAL, THE UNITED STATES SHALL PAY THE COST OF SHIPMENT. THE UNITED STATES SHALL, AFTER CONSULTATION WITH ARGENTINA, DETERMINE WHETHER THE MATERIAL SHALL BE RETURNED TO THE UNITED STATES OR ARGENTINA. IN THE EVENT OF RETURN TO THE UNITED STATES, THE UNITED STATES SHALL REIMBURSE THE PARTY HAVING TITLE OVER THE MATERIAL THE FAIR MARKET VALUE SUCH MATERIAL LESS THE COST OF SHIPMENT. ANY DISPUTES AS TO THE AMOUNT OF SUCH REIMBURSEMENT SHALL BE SETTLED PURSUANT TO PARAGRAPH 2 OF ARTICLE XIII OF THE AGREEMENT.

IF THE GOVERNMENT OF PERU CONCURS, I SUGGEST THAT THIS NOTE AND YOUR EXCELLENCY'S REPLY BE REGARDED AS CONSTITUTING CONFIDENTIAL

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AN AGREEMENT BETWEEN OUR TWO GOVERNMENTS WITH THE DURATION
AS PROVIDED IN ARTICLE XIV(2) FOR CERTAIN PROVISIONS OF
THE AGREEMENT.

(PERUVIAN NOTE WOULD MERELY AGREE WITH U.S. NOTE.)

END TEXT

CHRISTOPHER

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<< END OF DOCUMENT >>

Message Attributes

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